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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/486,904	03/03/2000	JOHN R. SNYDER	3220-66107	9526	
23643	7590 06/11/2002				
BARNES & THORNBURG			ЕХАМГ	EXAMINER	
11 SOUTH M INDIANAPO	ERIDIAN LIS, IN 46204		HELMER, GEORGIA L		
			ART UNIT	PAPER NUMBER	
			1638	10	
			DATE MAILED: 06/11/2002	13	

Please find below and/or attached an Office communication concerning this application or proceeding.

1) Responsive to communication(s) filed on 13 May 2002. 2a) This action is FINAL. 2b This action is non-final. 3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 9-14 and 20-24 is/are pending in the application. 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration. 5 Claim(s) 9 and 20-24 is/are rejected. 7 Claim(s) 9 and 20-24 is/are rejected. 7 Claim(s) is/are objected to. 8 Claim(s) 9 and 20-24 is/are rejected. 7 Claim(s) are subject to restriction and/or election requirement. Application Papers 9 The specification is objected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). 11 The proposed drawing correction filed on is: a) approved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12 The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. § 119 and 120 13 Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some colon None of: 1 Certified copies of the priority documents have been received in Application No. 3 Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) The translation of the foreign language provisional application has been received. 15 Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 120 (to a provisional application). 3 Notice of References Cited (P									
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OFFICE ACTION

Status of the Claims

- 1. The Office acknowledges receipt of Applicants Response; dated May 13, 2001, paper number 11.
- Applicant's substitute declaration, paper number 12, has been entered.
 Applicant has amended claims 9, 20-21, and added new claim 24. Claims 9, 10-14, and 20-24 are pending. Claims 9 and 20-24 are examined in the instant action.

This action is made FINAL.

3. All rejections not addressed below have been withdrawn.

Claim Rejections - 35 USC § 103

- 4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9 and 20–24 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kilby, NJ et al; (1995) Plant Journal 8: 637-652, in view of Odell et al, US patent #5,658,772, filed 27 July 1994, issued 19 August 1997, and Kilby, NJ et al (1993) Trends in Genetics, 9: 413-421, for reasons of record.

Applicant traverses primarily stating:

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 While Odell teaches a detrimental compound, Odell does not teach a method of expressing a gene encoding for a compound that is detrimental to the plant and is a commercially valuable product that is extracted from the plant.

Applicant's traversal has been considered and is unpersuasive, because

- Odell does indeed teach expression of barnase, a detrimental compound.
 Barnase is a commercially valuable product because its expression has been shown to produce seedless fruits such as watermelon, which are a commercially valuable commodity. While Odell does not teach extraction of barnase, Applicant is arguing against the references individually. One cannot show nonobviousness by attacking references individually, where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
- Furthermore, Odell extracted RNA and DNA encoding barnase for Northern and
 Southern analysis for confirmation of proper expression of barnase. It would
 have been *prima facie* obvious and well within the means of one of ordinary skill
 at the time the invention was made to extract the barnase expressed by Odell, as
 extraction of heterologous expressed proteins is routine in the art.

Applicant further traverses that

While Kilby (1993) teaches the possibility of using similar constructs to study

 potentially harmful mutations, the methods described by Kilby (1993) are limited
 to studying the potentially harmful mutations. And that there is no suggestion of

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a method of producing a compound by extracting the gene product of the mutation in question.

Applicant's traversal has been considered and is unpersuasive because

The methods described by Kilby (1993) are specifically mentioned (p420) as encompassing their use for activation or removal of specific genes, and are not limited to studying potentially harmful mutations. Kilby (1995) was relied on for teaching the introduction into plant cells of a DNA construct comprising a promoter, a blocking sequence, and a structural gene, where the blocking sequence is flanked by a pair of directly repeated site-specific recombination sequences, wherein the structural gene is operably liked to the promoter only after the removal of the blocking sequence (Figure 2, page 639).

It would have been *prima facie* obvious and well within the means of one of ordinary skill in the art at the time the invention was made to use the strategy of expressing a biologically detrimental compound only after removal of a blocking sequence.

Accordingly, the rejection is maintained.

Remarks

- No claim is allowed.
- 6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia L. Helmer whose telephone number is 703-308-7023. The examiner can normally be reached on 8:30 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 703-306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for

Page 5

regular communications and 703-308-4242 for After Final communications. All Technology Sector 1 fax machines are available to receive transmissions 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

June 7, 2002

Georgia L. Helmer Ph.D.

Patent Examiner

AU 1638

703-308-7023

PHUONG T. BUI PRIMARY EXAMINE